



U.S. Department of Justice

*United States Attorney
Southern District of New York*

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

December 28, 2016

BY ECF AND BY HAND

The Honorable Edgardo Ramos
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: United States v. Ahmed Mohammed El Gammal, 15 Cr. 588 (ER)

Dear Judge Ramos:

The Government writes in response to the defendant's December 27, 2016 letter to the Court (the "December 27, 2016 Letter") regarding (1) 18 U.S.C. § 3500 materials for one of the Government's witnesses, (2) translations of Government exhibits, (3) the defense's request for an abbreviated trial day, and (4) renewal of the defendant's motion to preclude the testimony of forensic examiners Craig M. Roth and Mary F. Horvath.

1. 18 U.S.C. § 3500 Materials

As the Court is aware, the Government previously produced the vast majority of one of its witness's materials pursuant to 18 U.S.C. § 3500 on November 4, 2016, more than two months before the trial in this case. On December 27, 2016, still nearly two weeks before trial, the Government provided additional disclosures for the same witness, and answered the defense's questions—posed to a member of the Government's team for the first time on December 26, 2016—regarding 3501-16 and 3501-17 that the defense raised in their December 27, 2016 Letter.

2. Translations

For the reasons explained at the December 19, 2016 conference in this case, the Government retained a new expert Arabic linguist in early December. This witness was first tasked with reviewing the translations the Government had previously provided to the defense in September and October, and finished his work last week. The Government produced this witness's translations to the defense on Friday, December 23. On December 12, while this witness was reviewing the Government's previous translations, defense counsel produced to the

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Government (a) certain defense exhibits containing Arabic to English translations, and (b) a spreadsheet of proposed changes to translations of certain portions of Government exhibits. The Government has tasked its expert to review the defense's exhibits and the defense's proposed changes to the Government's translations, and that work is under way. The Government has found the majority of the defense's proposed changes acceptable and the Government's exhibits will reflect this.

3. Trial Day

The Government has prepared for and expects a standard trial day. Nothing about the translations, discussed above, would give rise to the need for an abbreviated trial day. Further, without knowing the variables to which defense refers in its December 27, 2016 Letter, the Government is hard pressed to understand the need for an abbreviated trial day that would, as a result, extend the trial and further impose on the jury's time.

4. The Government's Expert Witnesses

In the December 27, 2016 Letter, defense counsel raises a spectrum of complaints about additional information the Government has provided to defense, at defense counsel's request, regarding the testimony of two forensic examiners—Craig M. Roth and Mary F. Horvath—who examined the defendant's electronic devices. These complaints are invalid and the Court should not preclude Mr. Roth's and Ms. Horvath's testimony.

As the Court is aware, the Government produced forensic images and reports of the contents of the electronic devices seized from the defendant's residence on January 12, 2016 and February 2, 2016, including three forensic extraction reports prepared by Craig M. Roth, who the Government has noticed to testify about the process by which the data reflected in those reports was extracted. Similarly, on April 29, 2016, the Government provided an extraction of data from an iPad seized from the defendant's residence and, on September 22, 2016, more than three months before trial, a report of how that data was extracted by Mary F. Horvath, whom the Government has noticed to testify about the process by which the data reflected in those reports was extracted. On October 3, 2016, again more than three months before trial, the Government provided resumes for Mr. Roth and Ms. Horvath listing their qualifications. On December 23, in response to defense's requests regarding the specific data from the previously-produced forensic images and reports the Government intends to rely on at trial, the Government produced a draft presentation highlighting the previously-produced data that it expects will be the subject of Mr. Roth's testimony. Today, the Government provided a similar draft presentation to the defense highlighting the previously-produced data that it expects will be the subject of Ms. Horvath's testimony, and a revised report of the data extracted from the iPad. With regard to the limited subjects and data from the iPad on which Ms. Horvath is expected to testify, the revised report does not differ materially from the previous version.

Just as with the notice, disclosures, and information provided with respect to the Government's historical cellsite expert—which the Court found were sufficient, denying the

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defense’s request for a “narrative” of the witness’s testimony (October 28, 2016 Conference Tr. at 37)—the Government has more than complied with Federal Rule of Criminal Procedure 16(a)(1)(G) and provided more than sufficient disclosures with respect to Mr. Roth and Ms. Horvath. The defendant has not identified any basis—much less a compelling basis—for the Court to impose a sanction so severe as precluding the Government’s expert testimony.

Respectfully submitted,

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cc: Sabrina P. Shroff/Annalisa Mirón/Daniel Habib (by ECF)
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